



## RESOLUTION

AUTHORIZING THE DIRECTOR OF BUDGET AND FISCAL SERVICES TO ENTER INTO AN AMENDMENT TO EXTEND THE INTERGOVERNMENTAL AGREEMENT WITH THE UNIVERSITY OF HAWAII FOR AN EDUCATIONAL AND INTERPRETATIVE PROGRAM FOR THE HANAUMA BAY NATURE PRESERVE.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu, 1990, as amended, requires that any intergovernmental agreement or amendment thereof which places an obligation on the City or any department or agency thereof receive the prior consent and approval of the Council of the City and County of Honolulu; and

WHEREAS, Section 103D-102(b)(3) of the Hawaii Revised Statutes, exempts contracts for the procurement of services from a governmental body of the State of Hawaii from the requirements of Hawaii Revised Statutes Chapter 103D, the Hawaii Public Procurement Code; and

WHEREAS, Resolution 11-128, adopted May 11, 2011, authorized the execution of an intergovernmental agreement (the "Agreement") between the City and the University of Hawaii ("UH") to manage, upgrade and implement the education and interpretative program at Hanauma Bay Nature Preserve for a period of twelve (12) months beginning July 1, 2011 through June 30, 2012; and

WHEREAS, the Agreement provides that the City may extend the Agreement for up to three additional years with compensation, provided funds have been authorized and appropriated for such purpose; and

WHEREAS, Resolution 12-84, adopted March 30, 2012, authorized the execution of Amendment No. 1 to the Agreement which extended the term of the Agreement for an additional one-year term from July 1, 2012 through June 30, 2013 in the amount of \$462,310.00; and

WHEREAS, Resolution 13-69, adopted April 9, 2013, authorized the execution of Amendment No. 2 to the Agreement which extended the term of the Agreement for an additional one-year term from July 1, 2013 through June 30, 2014 in the amount of \$474,913.00; and



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WHEREAS, the City wishes to extend the Agreement with the UH for an additional one-year term beginning July 1, 2014 through June 30, 2015 in the amount of \$487,895.00; and

WHEREAS, the proposed Amendment No. 3 to the Agreement is attached hereto as Exhibit A and by reference incorporated herein; and

WHEREAS, the UH has agreed to the terms of the Amendment No. 3 and is prepared to provide the services in accordance with Amendment No. 3; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council consent to and approve the proposed Amendment No. 3 attached hereto as Exhibit A and by reference made a part of this Resolution; and

BE IT FURTHER RESOLVED that the Director of Budget and Fiscal Services be hereby authorized to:

1. Execute an agreement with the UH in substantially the same from as the proposed Amendment No. 3 attached hereto as Exhibit A; and
2. Execute any incidental or related agreements and documents in furtherance of the above so long as such agreements and documents do not incur additional obligations on the part of the City; and



## RESOLUTION

BE IT FINALLY RESOLVED that the Clerk be directed to transmit copies of this Resolution to the Mayor, the Director for Budget and Fiscal Services, the Director of Parks and Recreation, the University of Hawaii (Office of Research Services, 2440 Campus Road, Box 368, Honolulu, Hawaii 96822), and to such other agencies as may be necessary.

INTRODUCED BY:

(br)

DATE OF INTRODUCTION:

**JUN 04 2014**

Honolulu, Hawaii

Councilmembers

CLERK OF HONOLULU  
RECEIVED  
JUN 04 2014  
12:17 PM

"EXHIBIT A"

**AMENDMENT NO. 3  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
Contract No. SC-DPR-1200004**

THIS AMENDMENT NO. 3 dated \_\_\_\_\_, (this "Amendment No. 3") is entered into by and between the **City and County of Honolulu**, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 (the "CITY"), and the **University of Hawaii**, a public body corporate and agency of the State of Hawaii, whose principal place of business and mailing address is the Office of Research Services, 2440 Campus Road, Box 368, Honolulu, Hawaii 96822 (the "CONSULTANT").

WITNESSETH THAT:

WHEREAS, the CONSULTANT and the CITY entered into an Agreement for Professional Services dated August 4, 2011, as amended by Amendment No. 1, dated July 9, 2012 and Amendment No. 2, dated June 28, 2013 (collectively the "Agreement") to render certain technical and professional services to manage, upgrade and implement an educational and interpretative program for the Hanauma Bay Nature Preserve (the "Project"); and

WHEREAS, Section 5 of the General Terms and Conditions of Contracts for Professional Services for the City and County of Honolulu (8/2000) incorporated by reference into the Agreement, authorizes the CITY at any time to make modifications in the Agreement, and the services provided by the CONSULTANT as the CITY deems necessary and advisable; and

WHEREAS, the Agreement provides that the City may extend the Agreement for up to three additional years with compensation, provided that funds have been authorized and appropriated for such purpose; and

WHEREAS, Resolution 12-84, adopted on May 9, 2012, authorized the execution of Amendment No. 1 to extend the term of the Agreement for an additional one-year term from July 1, 2012 through June 30, 2013 in the amount of \$462,310.00; and

WHEREAS, Resolution 13-69, adopted on May 8, 2013, authorized the execution of Amendment No. 2 to extend the term of the Agreement for an additional one-year term from July 1, 2013 through June 30, 2014 in the amount of \$474,913.00; and

WHEREAS, Resolution \_\_\_\_\_, adopted \_\_\_\_\_, authorized the execution of this Amendment No. 3 to extend the term of the Agreement for an additional one-year term from July 1, 2014 through June 30, 2015 in the amount of \$487,895.00; and

WHEREAS, the CITY and the CONSULTANT mutually desire to amend various provisions of the Agreement;

NOW, THEREFORE, the CITY and the CONSULTANT, in consideration of the foregoing and of the mutual promises hereinafter set forth, and intending to be legally bound, hereby mutually agree as follows:

A. AGREEMENT

1. COMPENSATION

Delete paragraph 4 of the Agreement in its entirety, and replace with the following:

"4. This is a firm fixed-price contract, and subject to the provisions of this paragraph and in accordance with Section 8 of the General Terms and Conditions, the CITY agrees to pay the CONSULTANT, for the satisfactory performance and completion of the Work, the payments in accordance with the schedule of payments, all as set forth in the Special Provisions. The aggregate amount of these payments shall not exceed the following limits:

Term:

July 1, 2011 – June 30, 2012	\$448,230.00
July 1, 2012 – June 30, 2013	\$462,310.00
July 1, 2013 – June 30, 2014	\$474,913.00
July 1, 2014 – June 30, 2015	\$487,895.00

The payment for services and the Work performed under this Agreement are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes, including State general excise and use tax.

In accordance with the paragraphs above, the total aggregate amount of ONE MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND THREE HUNDRED FORTY-EIGHT AND NO DOLLARS (\$1,873,348.00) is established as the maximum payable under this Agreement and is subject to the Special Provision and

the General Terms and Conditions, including the provisions thereof relating to reducing or increasing the compensation of the CONSULTANT."

**B. SPECIAL PROVISIONS TO THE AGREEMENT**

**1. PARAGRAPH 2. SERVICES**

Delete the second paragraph of Paragraph 2.B.1.b. in its entirety and replace with the following:

"A lecture and film series is presently held every Sunday and certain Saturday evenings, except during the Christmas holiday season. This activity is open to the general public. The CONSULTANT shall continue to provide this service."

**2. PARAGRAPH 4. TERM OF AGREEMENT**

Delete Paragraph 4, Term of Agreement, in its entirety and replace with the following:

**"4. TERM OF AGREEMENT**

This Agreement shall be effective for a period of forty-eight (48) months beginning July 1, 2011 through June 30, 2015."

**3. PARAGRAPH 8. AMENDMENT TO GENERAL TERMS AND CONDITIONS**

a. Delete Paragraph A. in its entirety and replace with the following:

"A. Being inapplicable to the Agreement contained herein, Sections 4.3 and 6.6 are hereby deleted in their entirety"

b. Add a new paragraph 5 to state as follows:

5. Delete Section 4.1.1, in its entirety, and in lieu thereof, insert the following:

"4.1.1 The contractor shall perform the work as an independent contractor. The contractor shall be responsible for any damage or injury caused by the

negligence, gross negligence and/or willful or wanton conduct of the contractor's volunteers.

The contractor is an independent contractor and shall not be deemed to be an agent, servant, representative or employee of the City. The contract shall not be construed to create a partnership or joint venture between the City and the contractor."

IT IS FURTHER AGREED THAT all terms and conditions of the Agreement referenced hereinabove, not inconsistent with the terms and conditions of this Amendment No. 3, are herein incorporated and shall remain in full force and effect.

In the event of any conflict or inconsistency between the provisions of this Amendment No. 3 and any provisions of the Agreement, the provisions of this Amendment No. 3 shall govern in all aspects.

By signing below, CONSULTANT hereby certifies that, to the best of its knowledge and belief, cost of pricing data, as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this Amendment No. 3 is accurate, complete, and current as of the date of this Amendment No. 3. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and the CITY which are part of the proposal.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

APPROVAL RECOMMENDED  
Department of Parks and Recreation

CITY AND COUNTY OF HONOLULU

\_\_\_\_\_  
Michele K. Nekota, Director

\_\_\_\_\_  
Nelson H. Koyanagi, Jr., Director  
Department of Budget and Fiscal Services

APPROVED AS TO FORM AND  
LEGALITY

CONSULTANT:  
UNIVERSITY OF HAWAII

\_\_\_\_\_  
Deputy Corporation Counsel

By \_\_\_\_\_  
Its \_\_\_\_\_  
Federal I.D. No. 99-6000354

C & C OF HONOLULU  
CITY CLERK  
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JUL 1 2004

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

**RESOLUTION 14-129**

Introduced: 06/04/14

By: ERNEST MARTIN (BR)

Committee: PARKS AND CUSTOMER  
SERVICES

Title: RESOLUTION AUTHORIZING THE DIRECTOR OF BUDGET AND FISCAL SERVICES TO ENTER INTO AN AMENDMENT TO EXTEND THE INTERGOVERNMENTAL AGREEMENT WITH THE UNIVERSITY OF HAWAII FOR AN EDUCATIONAL AND INTERPRETATIVE PROGRAM FOR HANAUMA BAY NATURE PRESERVE.

Voting Legend: \* = Aye w/Reservations

06/24/14	PARKS AND CUSTOMER SERVICES	CR-188 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
07/09/14	COUNCIL	CR-188 AND RESOLUTION 14-129 WERE ADOPTED. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER